IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.299 OF 1995

Commodore Harish Chandra Sharma]
Indian Navy (Retired) residing]
at 31/32, B-Wing, "Omkar Housing]
Society", Manpada, Ghod Bunder]
Road, Thane (West) -400607]..Petitioner

Vs.

1. Union of India]
having its office at]
Aayakar Bhavan Annexe,]
2nd floor, Maharshi Karve Rd.]
New Marine Lines, Bombay-]
400020]

2. The Chief of the Naval Staff]
having his office at Naval]
Headquarters, Sena Bhavan]
New Delhi-110 011]

3. The Flag Officer Commanding]
-in-Chief, Headquarters]
Western Naval Command, Shahid]
Bhagatsingh Road, Bombay-]
400 001]

4. The Unit Accountant,]
Barrack Store Office (Naval]
Works) Colaba, Bombay-400005]..Respondents

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Mr.A.I.Bhatkar Advocate for Petitioner
Mr.Y.R.Mishra with D.A.Dube for
Union of India-Respondent

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CORAM : DR.S.RADHAKRISHNAN AND
SMT.V.K.TAHILRAMANI,JJ.
DATE : NOVEMBER 13,2006

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J.):

1. The petitioner, a retired Commodore from Indian Navy, has filed this petition under Article 226 of the Constitution of India challenging the orders dated 22.8.1994, 13.9.1994, and 28.9.1994. By these orders, he was called upon to pay the amount of Rs.1,29,897/- towards retention of Government accommodation for the period from 1.3.1989 to 12.5.1991, in continuation of the retention bill received by him in September, 1991.

2. The petitioner came to be transferred from Bombay to Bangalore on 6.9.1987 and he was permitted by the competent authority of respondent no.3 to retain the Government accommodation for the period from 6.9.1987

to 30.6.1988 on account of children's education at Bombay. He was again transferred from Bangalore to Okha on 13.5.1988. Okha being a non-family station, at the request of the petitioner, he was allowed to retain the accommodation in Bombay till 12.5.1989 as per the orders passed by Respondent No.3. It appears that on 1.3.1989 Okha became a family station.

3. On 25.7.1989 the petitioner was transferred from Okha to Porbunder a non-family station and he was permitted to retain the accommodation at Bombay as per the orders passed by Respondent No.3 for the period from 25.7.1989 to 12.5.1991. On 13.5.1991 the petitioner came to be transferred from Porbunder to Bombay and he was allowed to stay in the same accommodation he had retained. Surprisingly, in September, 1991 he received a rent bill at damage rate to the tune of Rs.1,29,877/- for the period from 1.3.1989 to 12.5.1991. The petitioner retired from Naval Service on 13.4.1993 and recovery of Rs.1,29,877/- was made from the petitioner's gratuity and pension.

4. Affidavit-in-reply filed on behalf of Respondent Nos.2 and 3 states that the Local Audit Authorities

at Bombay had objected to the sanction given by Local Naval Authorities at Bombay for the period from 1.3.1989 to 12.5.1991 i.e. from the date Okha became a family station to the date the petitioner was transferred back to Bombay and asked the Local Naval Authorities to get government sanction to regularise the said period.

5. Though the Naval Authorities at Bombay had recommended to the Government of India through Headquarters for granting sanction, it was turned down by Government vide order dated 22.8.1994. Consequently, recovery of Rs.1,29,877/- was made from the petitioner’s gratuity and pension.

6. Having considered the respondents arguments and on perusing the affidavit-in-reply filed by Respondent Nos.2 and 3, it is clear that the petitioner was not in unauthorised occupation of the subject accommodation at Bombay from 1.3.1989 to 12.5.1991 and the retention of quarters during this period was duly sanctioned by Respondent No.3. Even though Okha became a family station on 1.3.1989 within a period of about 4 months i.e. from 25.7.1989, the petitioner was transferred from Okha

to Porbunder which was a non-family station. The order passed by Respondent No.3 permitted the petitioner to retain the family accommodation in Bombay for a period of three months with effect from 13.5.1988, thereafter, by subsequent orders, he was permitted to retain family accommodation including for the period from 1.3.1989 to 25.7.1989 and even thereafter till 12.5.1991. It is seen that sanction of the Government was accorded to retain the accommodation at Bombay for the period from 1.3.1989 to 25.7.1989 i.e. the date petitioner was posted at Porbunder a non-family station. During the period from 25.7.1989 to 12.5.1991 by the order of the competent authority i.e. Respondent No.3, he was permitted to retain the family accommodation at Bombay. Thus, all these orders passed from time to time, clearly reveal that the petitioner was not in unauthorised occupation of the quarters at Bombay so as to charge him rate at the damage rate for the period from 1.3.1989 to 12.5.1989.

7. Our attention was invited to the scheme of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which deals with powers to require payment of rent or damages in

respect of Public Premises. The said Section reads as under:-

. **7. Power to require payment of rent or damages in respect of public premises.--**(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

. (2) Where any person is, or has at any time been in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments, as may be specified in the order.

. [(2-A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978).]

. (3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of

the same, have been considered by the estate officer.

8. Thus, sub-section (3) of section 7 makes it very clear that no order can be made under sub-section (1) or (2) against any person until after the issuance of a notice in writing to a person calling upon him to show cause within such time as may be specified in the notice, as to why such an order cannot be made and unless his objection if any, and the evidence if any, he may produce in support of the same, has been considered by the estate officer. In the present case, it is apparent that the procedure laid down under Section 7(3) has not been followed before the bill was issued to the petitioner in September, 1991, on this ground itself the orders are liable to be set aside.

9. In the premises, this petition succeeds and the impugned orders dated 22.8.1994, 13.9.1994 and 28.9.1994 are hereby quashed and set aside. The Respondents are directed to refund to the petitioner the amount of Rs.99,000/- towards D.C.R.G. and Rs.13,877/- towards Leave Encashment. The refund be made on or before 31st December, 2006, failing which, the petitioner will be entitled to simple interest at

the rate of 18% per annum with effect from 1.1.2007. Rule made absolute accordingly.

[DR.S.RADHAKRISHNAN,J.]

[SMT.V.K.TAHILRAMANI,J.]